**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.26054 OF 2005

**03.3.2006**

Between:

G.Venkatesh, S/o.G.Vittal

And another

… Petitioners

AND

The Andhra Bank, represented by its

Authorised Officer, Sebastian Road Branch,

Secunderabad

And another

… Respondents

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ORDER:

The first petitioner is the husband of the second petitioner. The first petitioner obtained a loan of Rs.15,00,000/- from the first respondent Bank for his business duly creating security in favour of the Bank. As there was default, the first respondent issued a notice under Section 13(2) of the Securitisation of Financial Assets and Enforcement of Security Interest Act, 2002 (the Act, for brevity) calling upon the petitioners to pay a sum of Rs.21,22,121/- within a period of sixty (60) days from the date of receipt of the said notice. The petitioners dispute the amount claimed by the first respondent Bank. Be that as it is, the first respondent filed a miscellaneous application being C.M.P.No.4123 of 2005 under Section 14 of the Act on the file of the Court of the Chief Metropolitan Magistrate, Hyderabad seeking suspension to take possession of the properties in realization of the Bank loan. By an order dated 28.10.2005, the learned Chief Metropolitan Magistrate appointed an Advocate commissioner to take possession of the property and handover the same to the first respondent Bank. Aggrieved by the notice issued under Section 13(2) of the Act and the orders of the learned Chief Metropolitan Magistrate dated 28.10.2005, the

present writ petition is filed.

While admitting the writ petition, this Court stayed dispossession on condition of petitioner depositing a sum of Rs.4,00,000/- within three weeks from the date of the order. The first respondent Bank has now come forward with an application being W.V.M.P.No.3599 of 2005 for vacating the interim orders dated 07.12.2005.

In the counter affidavit filed accompanying the W.V.M.P.No.3559 of 2005, the Senior Branch Manager of the first respondent Bank stated that as the petitioners did not comply with the notice under Section 13(2) of the Act dated 15.12.2004, the Bank invoked subsection (4) of Section 13 of the Act and decided to take possession of the property. The first respondent Bank approached the Court of the Chief Metropolitan Magistrate for assistance to take possession of the property belonging to the petitioners, which was allowed. The other allegations made in the petitioners' affidavit are denied.

In view of the orders passed by the first respondent Bank under Section 13(4) of the Act, challenging the notice issued under Section 13(2) of the Act is unsustainable. An order passed by the Chief Metropolitan Magistrate under Section 14 of the Act is consequential to the first respondent Bank invoking Section 13(4) of the Act and, therefore, the order of the learned Chief Metropolitan Sessions Judge is also beyond any challenge. It is no doubt true, at this juncture, the petitioners are willing to avail one-time settlement and pay the amount demanded by the first respondent Bank. It is also not denied that Section 17 of the Act provides for an effective alternative remedy and all questions can be gone into by the appellate authority and the writ petition is not a proper remedy.

Therefore, without expressing any opinion on merits of the case, the writ petition is dismissed, giving liberty to the petitioners to avail the remedy under Section 17 of the Act. There shall be no order as to costs.

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(**V.V.S.RAO, J**)

March 03, 2006

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